

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**JOHN WIBHOLM,**  
Hardin County, Iowa

ADMINISTRATIVE CONSENT ORDER  
NO. 2008-AFO- ~~24~~

TO: John Wibholm  
308 Dogwood Avenue  
Alden, Iowa 50006

**I. SUMMARY**

This administrative consent order is entered into between John Wibholm and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issues surrounding a non-certified manure applicator and a manure discharge relating to the application. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Eric Wiklund, Field Office 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street SW  
Mason City, Iowa 50401  
Phone: 641/424-4073

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Director, Iowa Dept. of Natural Resources  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 or Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JOHN WIBHOLM

**III. STATEMENT OF FACTS**

1. John Wibholm farms in the Alden, Iowa area and rents farm ground located in Section 22, West Hardin Township, Hardin County from George Iorger.

2. On February 26, 2008, DNR Field Office 2 received a complaint alleging that poultry manure had been applied to Mr. Wibholm's field in Section 22, Hardin Township, Hardin County and the manure was pooling above the ravines. The field is less than a half mile from the Iowa River and the complainant was concerned the manure would go to the Iowa River when temperatures increased. On February 29, 2008, Eric Wiklund, DNR Field Office 2, investigated the complaint and observed that manure had been applied to the frozen, snow covered field in Section 22. He noted the field slopes to the Iowa River and that approximately 40% of the field had slopes greater than 4%. Some of the areas had begun to melt and collect in the field. It appeared that some of the runoff may have entered a nearby tile intake along the south side of 135<sup>th</sup> Street. Mr. Wiklund conducted a field test of the pooled water and the field test indicated ammonia levels greater than 3.0 mg/L. Mr. Wiklund also collected laboratory samples at the 135<sup>th</sup> Street Intake. The laboratory results indicated a Total Kjeldahl Nitrogen (TKN) level of 120 mg/L and an Ammonia N level of 20 mg/L.

3. On March 1, 2008, Mr. Wiklund spoke to Mr. Wibholm. Mr. Wibholm stated he had purchased manure from North Central Co-Op, who had purchased it from Boomsma, Inc. The manure had come from the Boomsma layer facility located in Section 27, Alden Township, Hardin County. Mr. Wibholm stated he had applied the manure during the second or third week of February 2008 and that he was not a certified manure applicator. He stated that he thought the poultry manure would melt into the snow and would not leave the field.

4. On March 12, 2008, Mr. Wiklund and Jeremy Klatt, also from DNR Field Office 2, returned to Mr. Wibholm's field and observed runoff from the field entering the tile intake along the south side of 135<sup>th</sup> Street and a surface discharge from the field to the north. The runoff was reddish/brown in color and smelled of manure. Mr. Wiklund and Mr. Klatt collected laboratory samples at several locations and the results were as follows:

Sample Location	TKN	Ammonia N	Biochemical Oxygen Demand (BOD)	Total Suspended Solids (TSS)
(1) 135 <sup>th</sup> Street Intake	100 mg/L	29 mg/L	330 mg/L	170 mg/L
(2) Ponded 135 <sup>th</sup> Street	58 mg/L	16 mg/L	82 mg/L	39 mg/L
(3) North Field Channel	95 mg/L	27 mg/L	290 mg/L	90 mg/L
(4) Tile Outfall (north of field of application)	30 mg/L	8.8. mg/L	98 mg/L	39 mg/L

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JOHN WIBHOLM

(5) Ponded Outlet	24 mg/L	8.1 mg/L	69 mg/L	28 mg/L
(6) Iowa River North Outfall	20 mg/L	5.7 mg/L	60 mg/L	18 mg/L
(7) Iowa River South Outfall	21 mg/L	5.8 mg/L	64 mg/L	22 mg/L
(8) Iowa River Field Runoff	3.2 mg/L	1.4 mg/L	16 mg/L	6 mg/L

Mr. Klatt and Mr. Wiklund observed that manure runoff was discharging from a tile outfall north of the field of application (Sample #4). There was a large amount of foam at the discharge pipe. They observed that surface runoff was also joining the manure discharge from the tile outfall and both were discharged to a small pond on Mr. Joerger's property. The discharge proceeded from the pond to an outlet at the northwest corner of the pond (Sample #5). Mr. Klatt and Mr. Wiklund also observed two outfalls (Samples #6 and #7) discharging to the Iowa River. Discolored water was being discharged to the Iowa River and the plunge pool below the outfalls was also discolored. Based on the flow, the visual observations, and the sample results, it appeared both outfalls came from the pond. Mr. Wiklund collected a sample from a different field adjacent to the Iowa River (Sample #8). It did not appear there had been manure application to field adjacent to the river. The surface of the Iowa River was frozen at the time of the investigation; therefore, no samples could be collected from the Iowa River.

5. On March 26, 2008, a Notice of Violation letter was sent to Mr. Wibholm for the violations discovered during the above-mentioned investigation. The violations included failure to obtain manure applicator certification and the discharge of manure to a water of the State. The letter informed Mr. Wibholm the matter was referred for further enforcement. The letter was also sent to George Joerger, North Central Co-Op, and Boomsma, Inc.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.19(1) states a commercial manure service, a commercial manure service representative or a confinement site manure applicator shall not apply dry or liquid manure to land, unless the person is certified. Mr. Wibholm was not a certified applicator and land-applied manure from a confinement feeding operation. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.2(7) states that all manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface or groundwater pollution. Mr. Wibholm land-applied manure that resulted in a manure discharge from the field to the Iowa River. The above-mentioned facts indicate a violation of this provision.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JOHN WIBHOLM

4. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. DNR Field Office 2 observed high levels of manure runoff from the field and observed the discolored water to have a manure odor. The above-facts disclose a violation of one or more of these criteria.

5. 567 IAC 65.3(4)(c) states that manure application on frozen or snow-covered cropland should be avoided where possible. If manure is spread on frozen or snow-covered cropland, the application should be limited to areas on which the land slopes are 4% or less. Mr. Wiklund estimated that 40% of the field where Mr. Wibholm applied manure had a slope of greater than 4%.

**V. ORDER**

THEREFORE, the DNR orders and Mr. Wibholm agrees to do the following:

1. Mr. Wibholm shall become a certified manure applicator prior to land-applying manure; and
2. Mr. Wibholm shall pay a penalty of \$6,000.00 within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$6,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Mr. Wibholm has saved time and money by not being properly certified to land-apply manure. In addition, he has not had to pay the certification fees. Therefore, \$1,500.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: JOHN WIBHOLM

at this time, as the most equitable and efficient means of resolving the matter. The violations cited in this order threaten the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. There was a release of manure that caused water quality violations. Based on the above considerations, \$2,500.00 is assessed for this factor.

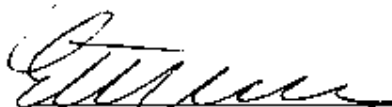
Culpability – Mr. Wibholm has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Wibholm applied manure to frozen cropland and approximately 40% of the field had slopes greater than 4%. Based on the above considerations, \$2,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly by and with the consent of Mr. Wibholm. For that reason, Mr. Wibholm waives the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

  
\_\_\_\_\_  
RICHARD A. LEOPOLD  
Iowa Department of Natural Resources

Dated this 2 day of  
July, 2008.

  
\_\_\_\_\_  
JOHN WIBHOLM

Dated this 22 day of  
May, 2008.

#No Number; Kelli Book; Field Office 2; Ken Hessenius; Gene Tinker; EPA; VIII.D.3.a and VIII.D.4